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U.S. Recognition of Its Obligation to Filipino Amerasian Children Under International Law

by
MARIA B. MONTES*

The obscenities in this country are not girls like Ermi. It is the poverty which makes them obscene, and the criminal irresponsibility of the leaders who made this poverty a deadening reality. . . . There is so much dishonesty [S]ex is the only honest thing left.¹

From World War II until 1992, the United States maintained troops at Clark Air Base and Subic Naval Base in the Philippines. The cities adjacent to the bases developed subeconomies in prostitution supported primarily by United States servicemen.² The relationships between Filipina prostitutes and U.S. servicemen produced thousands of Amerasian children.³ The majority of these children have been abandoned by their fathers. The children and their mothers most often live in poverty.⁴ This Note will explore the rights of these Filipino Amerasian children under both United States and international law. Focusing primarily on the United States government's obligation to the children under international law, this Note will discuss alternatives for redress of the children's grievances in both Congress and federal court.

Part I provides a brief review of the role of the United States in Filipino history including background information on the U.S. bases and adjacent cities. Part II discusses the legal strategies which have been pursued on behalf of the Filipino Amerasian children to date. These include *Acebedo v. United States*,⁵ a class action lawsuit filed in

* J.D., 1995; A.B., Harvard and Radcliffe Colleges, 1989. I wish to thank my family and friends for their support, especially Professors Virginia Leary and Naomi Roht-Arriaza for their comments in preparation of this Note.

1. F. SIONIL JOSE, *Obsession*, in TWO FILIPINO WOMEN 25 (1981).

2. Aida F. Santos, *Gathering the Dust*, in SAUNDRA POLLOCK STURDEVANT & BRENDA STOLTZFUS, LET THE GOOD TIMES ROLL: PROSTITUTION AND THE U.S. MILITARY IN ASIA 32, 37 (1992) [hereinafter STURDEVANT & STOLTZFUS].

3. Jessie Mangaliman, *U.S.' Bleak Legacy in Philippines*, NEWSDAY, May 3, 1992, at 15.

4. *Id.*

5. *Acebedo v. United States*, No. 93-124C (Cl. Ct. Nov. 5, 1993).

the Federal Court of Claims, as well as proposed legislation in the United States Congress.⁶ Part III explores the rights of the Filipino Amerasian children under international law and discusses how the children may have a viable claim in federal court based on those norms. Finally, Part V provides a discussion of the potential options of relief for the Filipino Amerasian children.

I. The United States in the Philippines

The social, historical, and economic context of the United States' involvement in the Philippines is critical in understanding the legal debate over the Filipino Amerasian children. Colonization of the Philippines was the United States' first sustained venture in Asia. Among the legacies of this venture are the tens of thousands of binational children. Even though the U.S. military has abandoned its bases, the U.S. is still a strong influence in the Philippines, and Filipino Amerasians are a lasting reminder of that presence.

A. The United States as a Colonial Sovereign

The United States' first military engagement in the Philippines did not take place during the famous World War II battles at Bataan or Corregidor. It took place in 1898.⁷ On April 30th of that year, Commodore George Dewey entered Manila Bay, and with the words "You may fire when ready, Gridley," launched the assault that contributed to the beginning of the Spanish-American War.⁸

The United States defeated Spain a few months later.⁹ As a result, the U.S. took control of the Spanish colonies in the Philippines, Cuba, and Puerto Rico. This effectively ended over 300 years of Spanish rule in the Philippines.¹⁰

Many Filipinos welcomed American colonial authority, but the independence movement did not die.¹¹ Soon after the victory against the Spanish, the United States found itself fighting another war in the islands, subsequently called "The Philippine Insurrection."¹² This lasted from 1899 until 1902.¹³ Meanwhile, back in the United States, citizens denounced American imperialism in the former Spanish colo-

6. H.R. 2429, 103d Cong., 1st Sess. (1993). This bill was introduced by Representative Lucien Blackwell of Pennsylvania.

7. See STANLEY KARNOW, IN OUR IMAGE 78 (1989) [hereinafter KARNOW].

8. *Id.* at 79.

9. *Id.* at 123-24.

10. *Id.* at 9, 123.

11. *Id.* at 139-66.

12. *Id.*

13. *Id.*

nies.¹⁴ Despite these problems, the United States set up a colonial regime in the Philippines under the guidance of future President William Howard Taft.¹⁵ This regime lasted until Filipino independence was declared in 1946, notwithstanding occupation by the Japanese from 1941 to 1944.¹⁶

Though independent, the Philippines has remained a colonial economic and social system in many ways. For example, the Philippine sugar quota helped entrench a previously existing feudal order.¹⁷ A small but wealthy elite prospered while conditions for the rest of the people grew worse.¹⁸

Today, unlike some of its Asian neighbors, the Philippines remains a poor country. Brownouts are a frequent occurrence in Manila. The telephone lines often do not work. The average annual income in the Philippines is \$740.¹⁹

B. The Bases and the Bars

The U.S. military did not leave the islands despite Filipino independence. Its presence continued until 1992, when the Filipino Senate failed to renew the leases for Subic Naval Base and Clark Air Base.²⁰ These two bases had been the cornerstone of U.S. operations in the Pacific since the Spanish-American War.²¹

Subic Naval Base began as a Spanish installation and was ceded to the Americans with the rest of the islands in 1898.²² United States Marines trained at Subic during World War II when it was the largest military training facility in the world.²³ Until 1992, Subic provided logistical support for the U.S. Seventh Fleet and was the best ship repair

14. Some have compared the Philippine Insurrection to the United States involvement in Vietnam in the 1960s. The anti-imperialist cause enlisted prominent figures such as Mark Twain, William Jennings Bryant, and William James. For the legal manifestations of this debate, see *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922); *Downes v. Bidwell*, 182 U.S. 244 (1901).

15. See KARNOW, *supra* note 7, at 167-95.

16. For an eyewitness account of the Japanese occupation from an American perspective, see A.V.H. HARTENDORP, *THE JAPANESE OCCUPATION OF THE PHILIPPINES* (1967).

17. FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, *PHILIPPINES: A COUNTRY STUDY* 120-22, 143-47 (Ronald E. Dolan ed., 1993).

18. *Id.* at 43-45. The neocolonial relationship was solidified in such legislation as the Philippine Trade Act, also known as the Bell Trade Act, and the Tydings Rehabilitation Act, the Military Base Agreement, and the Military Assistance Agreement. All were passed within a few years of Filipino independence.

19. Bruce Lambert, *Abandoned Filipinos Sue U.S. Over Child Support*, N.Y. TIMES, June 21, 1993, at A3.

20. *Philippine Adieu*, S.F. CHRON., Nov. 30, 1992, at A20.

21. Sheila Coronel, *With Hope and Tears, U.S. Closes Philippine Base*, N.Y. TIMES, Nov. 25, 1992, at A3.

22. STURDEVANT & STOLTZFUS, *supra* note 2, at 33.

23. *Id.*

station in the Pacific.²⁴ Clark Air Base began as a U.S. Army Cavalry station towards the end of the Spanish-American War.²⁵ Until 1992, it had served as the only tactical operational U.S. Air Force installation in the southeast Asian region, with full defense capability.²⁶ Both Clark and Subic provided support during the U.S. military actions in Vietnam and, more recently, the Persian Gulf.²⁷

Thriving economies sprang up around the bases. The city across the bridge from Subic is called Olongapo. The city near Clark is Angeles. In 1990, Olongapo officials estimated that Subic Naval Base generated \$344 million for the local economy—\$34.25 million of which was off-base spending by military personnel.²⁸

Prostitution, euphemistically known at Olongapo and Angeles as "the entertainment industry," was among the most profitable of the businesses catering to U.S. servicemen.²⁹ There were an estimated 55,000 prostitutes in the two cities combined in the early 1990s.³⁰ Most of the prostitution centered around bars, clubs, and discotheques where servicemen purchased a drink and a few minutes, or perhaps a whole evening, with a "hospitality girl."³¹

As a result of the relationships between Filipina prostitutes and U.S. servicemen, thousands of children were born, mostly out of wedlock.³² The number of Amerasians in the Philippines has been estimated from 23,000 to 50,000 nationwide.³³ The majority of these

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*; see also William Branigin, *U.S. Military Ends Role in Philippines: After 94 Years, Navy Leaves With Parade, Tears, Questions*, WASH. POST, Nov. 24, 1992, at A1.

28. Susan Marquez Owen, *Men and Women of "Sin City"*, S.F. CHRON., Aug. 5, 1990, at 8/Z.

29. STURDEVANT & STOLTZFUS, *supra* note 2, at 31.

30. *Id.*

31. *Id.* at 39; see also Lambert, *supra* note 19, at A3.

32. *Id.* The U.S. military did not discourage interaction between Filipina women and U.S. servicemen. For a discussion of the military's attitude towards Asian women, see Robin S. Levi, Note, *Legacies of War: The United States' Obligation Toward Amerasians*, 29 STAN. J. INT'L L., 459, 465-69 (1993). That the military's conduct has helped to create harmful stereotypes of Asian women cannot be overestimated. In a recent case, a former Air Force captain called an American citizen of Filipina ancestry a "chink and a whore" when it appeared she would get to use the first class restroom aboard an airplane ahead of him. *Vaccaro v. Stephens*, No. 87-1777, 1989 U.S. App. LEXIS 5864, at *2 (9th Cir. May 1, 1989) (withdrawn June 9, 1989). Though a single case cannot be taken as evidence of the harmful stereotypes of Asian women created by the U.S. military, the connection between Stephens' military conduct and his choice of profanities cannot be dismissed as coincidental.

33. *Ramos Says U.S. Has An Obligation to Filipino "Amerasians"*, UPI, Nov. 23, 1992, available in LEXIS, News Library, ARCNEWS file. The number of Amerasians in the Philippines exceeds those of other Asian countries where the U.S. either had or continues to have a military presence.

children have been abandoned by their fathers. Most continue to live with their mothers or their mothers' extended families in extreme poverty. Some are orphans. Many hope to emigrate to the United States in search of their fathers and a better life.³⁴

II. U.S. Action on Behalf of Filipino Amerasians to Date

U.S. citizens, realizing their obligation to the abandoned Filipino Amerasian children, have made some attempts to provide for them. The Pearl S. Buck Foundation is a non-profit organization based in Pennsylvania that works with Amerasian children in the Philippines, Vietnam, and other Asian countries.³⁵ In the legal area, a class action lawsuit was recently filed on behalf of the children and their mothers for their financial support. In addition, legislation has been proposed to allow the children to immigrate to the United States. While all of these alternatives are well-intentioned, none has been effective in fully addressing the United States' responsibility to these children.

A. *Acebedo v. United States*

In June, 1993, Joseph P. Cotchett, a private attorney, filed a class action suit against the U.S. Navy on behalf of the Amerasian children and their mothers from Olongapo.³⁶ The plaintiffs alleged a breach of an implied in fact contract for medical services and educational benefits between the Navy and the women and children.³⁷ They asserted that the Navy provided supplies and funds to operate a medical and educational clinic known as the Social Hygiene Center.³⁸ The plaintiffs further asserted that the Navy authorities "fostered and promoted" prostitution outside the base, as Olongapo had been designated by the Navy as a major rest and recreation center for the Western Pacific Fleet.³⁹

34. Lambert, *supra* note 19, at A3; Ruben Alabastro, *U.S. Leaves Tragic Human Legacy in Philippines*, REUTERS LIBRARY REPORT, Nov. 23, 1992; *Primetime Live: Will You Love Me . . . Tomorrow?* (ABC television broadcast, May 3, 1993).

35. See John Hail, *Twenty Years Of Helping Amerasians*, UPI, Feb. 3, 1984, available in LEXIS, News Library, ARCNEWS File; Rita Raagas, *Amerasians Apply For Citizenship*, UPI, June 21, 1994, available in, LEXIS, News Library, CURNWS File; Girlie Linao, *Filipino Amerasians Dream of Better Life in the U.S.*, DEUTSCHE PRESSE-ARGENTUR, Nov. 27, 1994, available in LEXIS, News Library, CURNWS File.

36. *Acebedo v. United States*, No. 93-124C (Cl. Ct. Nov. 8, 1993). The intended class was composed of mothers and children from Olongapo only—it did not include the mothers and children from Angeles.

37. *Id.* at 9 (complaint). Plaintiffs brought suit under the Tucker Act, 28 U.S.C. § 1491 (1988 & Supp. V 1993), which waives sovereign immunity for suits against the U.S. government based in contract.

38. *Id.* at 9 (complaint).

39. *Id.* at 10 (complaint).

The Federal Court of Claims stayed the motion certifying the class and subsequently granted the Navy's motion to dismiss for failure to state a claim.⁴⁰ The court held that the plaintiffs had not pleaded the requisite elements of an implied in fact contract.⁴¹ The plaintiffs were unable to show that Navy authorities had offered medical and educational services and that these services had been accepted.⁴² The court held that "[w]hen the United States is a party, the government official whose conduct is relied upon must have actual authority to bind the government in contract."⁴³ The court further held that even if the plaintiffs had shown the requisite elements, the contract would fail for lack of consideration as an "illegal contract" over which the court had no jurisdiction.⁴⁴ No appeal was taken.

B. Legislative Relief

In *Acebedo*, the court suggested that the resolution of the Filipino Amerasian issue lay with Congress, rather than the courts.⁴⁵ Existing legislation grants preferential treatment in immigration to Amerasians from Asian countries other than the Philippines.⁴⁶ The recently proposed House Bill 2429 would have extended preferential status to the Filipino Amerasian children, but died in session in 1994.⁴⁷ Other legislation includes 22 U.S.C. section 2201 (Assistance to Certain Disadvantaged Children in Asia), which provides some foreign aid for Amerasian children in Asian countries where the United States has had a military presence. However, the amount of money that is provided is far short of the money necessary to support tens of thousands of children.⁴⁸ In sum, a survey of the current and proposed legislative options shows that Congress has yet to adequately recognize the U.S.'s responsibility in the Philippines.

The most recent legislative action was House Bill 2429, which had been proposed concurrently with *Acebedo*.⁴⁹ As mentioned, this bill sought to amend the Amerasian Immigration Act of 1982 to include

40. *Id.* at 4-5.

41. *Id.* at 3.

42. *Id.*

43. *Id.* (quoting *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947)).

44. *Id.*

45. *Id.*

46. Immigration and Nationality (Amerasian Immigration) Act, 8 U.S.C. § 1154(f)(2)(A) (1988 & Supp. 1993).

47. See H.R. 2429, 103d Cong., 1st Sess. (1993).

48. There are an estimated 23,000 to 50,000 Amerasians in the Philippines. See *supra* note 33. If 30,000 Filipino Amerasians were to receive \$200 each month, this would cost the U.S. government \$72 million annually. Section 2201 provides only \$3 million to cover expenses for all Amerasians, not just those in the Philippines. See *infra* notes 60-61 and accompanying text.

49. H.R. 2429, 103d Cong., 1st Sess. (1993).

Amerasians born in the Philippines.⁵⁰ A few months after the introduction, the Filipino House of Representatives passed its own resolution in favor of House Bill 2429.⁵¹ The Filipino resolution called for the country's Department of Foreign Affairs to lobby the U.S. Congress for the Bill's passage.⁵² It also called on Filipino President, Fidel Ramos, to raise the issue with President Clinton during an upcoming state visit.⁵³

House Bill 2429 would have amended the Amerasian Immigration Act of 1982, which allowed the children of American citizens from Thailand, Korea, Vietnam, Laos, and Kampuchea to emigrate to the United States under the highest preference category for immigration.⁵⁴ To qualify for a visa under the Act, applicants must state reasons to believe that they were fathered by an American.⁵⁵ Physical appearance may be considered, along with documented proof.⁵⁶

The Amerasian Immigration Act was amended once previously in 1988. The Indochinese Refugee Resettlement and Protection Act or "Homecoming Act" was specifically directed towards Vietnamese Amerasians. The Act provides that all Amerasian children born in Vietnam between January 1, 1962, and January 1, 1976, can emigrate to the United States with their families, guardians, or spouses.⁵⁷ The Act sets a deadline of two years for Vietnamese Amerasians to arrive in the United States and exempts them from immigration quotas.⁵⁸ The Vietnamese Amerasians are not legally considered refugees, but they are still eligible for full refugee benefits, including government assistance and English lessons for one year.⁵⁹

Beyond the Acts granting Amerasians preference in immigration, Congress has recognized some obligation to Amerasian children in

50. *Id.*

51. H.R. No. 797 (Phil., Oct. 5, 1993). The Filipino government hired a lobbyist in Washington, D.C., to help secure passage of the U.S. bill.

52. *Id.*

53. *Id.*

54. Immigration and Nationality (Amerasian Immigration) Act, 8 U.S.C. § 1154(f)(2)(A) (1988 & Supp. 1993).

55. § 1154(f)(3)(B).

56. § 1154(f)(3)(B).

57. The Homecoming Act was part of the Indochinese Refugee Resettlement and Protection Act of Dec. 22, 1987, Pub. L. No. 100-202, 1987 U.S.C.A.N. (101 Stat.) 1329-40.

58. *Id.* at § (A)(1).

59. *Id.* at § (b)(3)(c). For a discussion of the legislative history and procedure under the Homecoming Act, see Levi, *supra* note 32, at 487-93; MaryKim DeMonaco, Note, *Disorderly Departure: An Analysis of the United States Policy Toward Amerasian Immigration*, 15 BROOK. J. INT'L L. 641 (1989); Ronald Low, *No Child Should Be Without Love and Protection: The Legal Problems of Amerasians*, 26 HOW. L.J. 1527 (1983); Richard T. Mermelstein, *Welcoming Home Our Children: An Analysis of the New Amerasian Immigration Law*, 2 B.U. INT'L L.J. 299 (1983).

other legislation. For example, 22 U.S.C. section 2201, Assistance to Certain Disadvantaged Children in Asia, provides that:

(a) The Congress recognizes the humanitarian needs of disadvantaged children in Asian countries where there has been or continues to be a heavy presence of United States military and related personnel in recent years. Moreover, the Congress finds that inadequate provision has been made for the care and welfare of such disadvantaged children, particularly those fathered by the United States citizens.

(b) Accordingly, the President is authorized to expend up to \$2,000,000 of funds made available under chapter 1 of this part, in addition to funds otherwise available for such purposes, to help meet the needs of these disadvantaged children in Asia by assisting in the expansion and improvement of orphanages, hostels, day care centers, school feeding programs, and health, education, and welfare programs. Assistance provided under this section shall be furnished under the auspices of and by international organizations or private voluntary agencies operating within, and in cooperation with, the countries of Asia where these disadvantaged children reside.⁶⁰

In 1985, the monetary award under sub-section (b) of the Act was increased to \$3 million.⁶¹ This aid has been distributed through international non-governmental organizations such as the previously mentioned Pearl Buck Foundation.⁶² In passing the 1985 amendment, the House Committee on Foreign Affairs was primarily concerned with the plight of Vietnamese Amerasians,⁶³ although no sub-group is specified in the text. It is unclear how much of the money actually goes to the Filipino Amerasians.⁶⁴

In sum, legal efforts designed to help the Filipino Amerasian children have either ignored Filipino Amerasians or been ineffective at addressing their needs. The *Acebedo* case was dismissed for failure to state a claim, and two of the three existing legislative acts affecting Amerasian children do not include those born in the Philippines. House Bill 2429 would have amended current law to include Filipino Amerasians, but it died in session. Because the United States has not yet recognized its legal and moral obligation to the Filipino Amerasian children, they must look to alternate forms of relief. International law may provide their best source of legal rights.

60. Foreign Assistance Act of Sept. 4, 1961, Pub. L. No. 87-195, pt. 1, ch. 2, § 241, as added Oct. 6, 1978, Pub. L. No. 95-424, § 116, 1978 U.S.C.C.A.N. (92 Stat.) 952.

61. This was part of the International Security and Development Act of Aug. 8, 1985, Pub. L. 99-83, § 903(a), 1985 U.S.C.C.A.N. (99 Stat.) 268.

62. See *supra* note 35 and accompanying text.

63. STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, FOREIGN ASSISTANCE LEGISLATION FOR FISCAL YEARS 1986-87 (PART 8) 77 (Comm. Print 1985).

64. See Nirmal Ghosh, *In Olongapo, A Ruined Community Struggles To Recover*, STRAITS TIMES, Dec. 4, 1994, at 6 (discussing grants through USAID).

III. The Legal Rights of Filipino Amerasian Children Under International Law Should Be Recognized by the United States

In his 1994 State of the Union address to Congress, President Clinton said: "It is time to demand that people take responsibility for the children they bring into this world. Each day we delay making a commitment to our children carries a dear cost."⁶⁵ The children at Olongapo and Angeles have been recognized as part of this responsibility. Because they were brought into this world by U.S. servicemen, the United States has some obligation, legal as well as moral, to contribute to their upbringing.

Assuming that the legislative alternatives described and suggested in this Note fail, the Filipino Amerasians have one last recourse: they may petition a federal court for recognition of their rights under international law. Initially, this Section discusses how customary international law may be used to state a claim in federal court. It then explores the rights of Filipino Amerasians under international law and outlines the customary norm binding the U.S. government in a lawsuit on the children's behalf. Finally, the Section addresses several arguments that might be raised in an attempt to defeat the international law claim of Filipino Amerasian children in a United States federal court.

A. Using Customary International Law to State a Claim in Federal Court

The courts of the United States are bound to interpret the law, whether that law be derived from international or domestic sources. The Supreme Court has confirmed that "[i]nternational law is part of our law,"⁶⁶ but the extent of its authority in American courts has been the subject of much debate among jurists and scholars.⁶⁷ The Restatement (Third) of the Foreign Relations Law of the United States section 111 asserts that both treaties and customary international law are enforceable in U.S. courts:

65. President William Jefferson Clinton, State of the Union Address to Congress (Feb. 17, 1994).

66. *The Paquete Habana*, 175 U.S. 677, 700 (1900).

67. See, e.g., Louis Henkin, *International Law in the United States*, 82 MICH. L. REV. 1555 (1984) (examining international legal methodologies of some federal court decisions); Lea Brilmayer, *International Law in American Courts: A Modest Proposal*, 100 YALE L.J. 2277 (1991) (arguing that international law claims are similar enough to domestic claims to be decided by U.S. courts); Howard S. Shrader, Note, *Custom and General Principles as Sources of International Law in American Federal Courts*, 82 COLUM. L. REV. 751 (1982) (arguing against the liberality with which federal courts have invoked international law).

(1) International law and international agreements of the United States are law of the United States and supreme over the law of the several states.

(2) Cases arising under international law or international agreements of the United States are within the Judicial Power of the United States and, subject to Constitutional and statutory limitations and requirements of justiciability, are within the jurisdiction of the federal courts.⁶⁸

Customary law reflects general practices of governments that have been accepted as law.⁶⁹ Unanimous acceptance of the custom is not necessary; rather, widespread acceptance is sufficient to establish a customary norm.⁷⁰ Furthermore, the acquiescence may take place within a short period of time.⁷¹ A customary norm binds all governments, even those that have not recognized it, as long as the government has not expressly and persistently objected to the norm's development.⁷²

When confronted with the argument that customary international law should apply, a court must decide first, whether the asserted rule has ripened into a norm, and second, whether the norm is judicially enforceable.⁷³ To determine whether a rule has achieved the status of a customary norm, a judge should begin with the list of sources set forth in *United States v. Smith*: "[T]he law of nations . . . may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law."⁷⁴ In a case where a norm is invoked as the basis of an international tort, one court has stated that the norm must be "universal, definable, and obligatory."⁷⁵ To meet that requirement, a plaintiff "need not establish unanimity among nations" but instead "a general recognition among states that a specific [sic] practice is prohibited."⁷⁶

68. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 114 (1987) [hereinafter RESTATEMENT].

69. IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 6-7 (3d ed. 1979). For a discussion of the role of custom in international law, see ANTHONY A. D'AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW (1971).

70. *Id.*

71. *Id.*; RESTATEMENT, *supra* note 68, at § 102, cmt. b.

72. Brownlie, *supra* note 69, at 6-7.

73. *Id.*

74. 18 U.S. (5 Wheat.) 153, 160-61 (1820). This is not an exhaustive list of sources consulted by U.S. courts in deciding cases based on international law.

75. *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1540 (N.D. Cal. 1987), *reconsideration granted and denied in part*, 694 F. Supp. 707 (N.D. Cal. 1988).

76. *Forti v. Suarez-Mason*, 694 F. Supp. 707, 709 (N.D. Cal. 1988).

B. The Customary Norm Binding the United States

The customary law governing the situation of the Filipino Amerasians is part of emerging law governing the rights of binational children. This law has developed in the years since World War II, primarily out of the practices of the European powers towards their former colonies. The United States has contributed to the existence of the customary norm governing binational children in specific domestic legislation concerning Amerasian children. In addition, the provisions of the United Nation's Declaration and Convention on the Rights of the Child may be regarded as evidence of the norm.⁷⁷

(1) *The Practices of Other Nations Regarding Binational Children*

In situations where people from different countries have met *en masse* to produce binational children, custom has dictated that the children receive recognition and assistance from both their mothers' and fathers' countries. The French colonial government of Indochina recognized its obligation to French Eurasian children by setting up financial support programs as well as a repatriation program in the 1940s.⁷⁸ Both the United Kingdom and the Netherlands have also chosen to repatriate Eurasian children born to their citizens in former colonies.⁷⁹ A U.S. court need only verify the records of these practices to validate the emergence of a customary norm.

(2) *Domestic Legislation Passed in Recognition of the Norm*

A review of the legislation passed in Congress on behalf of Amerasian children demonstrates that the United States recognizes an emerging customary norm governing the rights of binational children. Examples of this include the Amerasian Immigration Act of 1982,⁸⁰ which granted preferred immigration status to Amerasians from Thailand, Korea, Vietnam, Laos, and Kampuchea, as well as the Homecoming Act of 1988,⁸¹ which created special provisions for the repatriation of Vietnamese Amerasians. Other examples of this legislation include Assistance to Certain Disadvantaged Children in

77. For a discussion of customary international law and the norm governing the plight of Amerasian children generally, see Levi, *supra* note 32, at 476-81.

78. See Marilyn T. Trautfield, Note, *America's Responsibility to Amerasian Children: Too Little, Too Late*, 10 BROOK. J. INT'L L. 55, 69-70 (1984); Levi, *supra* note 32, at 476-77. More recently, the Japanese are also considering granting assistance to Filipino-Japanese children abandoned by their Japanese fathers in the Philippines. *Japanese Morning Newspaper Headlines*, Aug. 24, 1994, available in LEXIS, Nexis Library, WIRES File (stating "Murayama To Tell Philippines That Japan Will Consider Help For Filipino-Japanese Children").

79. Levi, *supra* note 32, at 477-78.

80. 8 U.S.C. § 1154(f)(2) (1994).

81. Pub. L. No. 100-202, 1987 U.S.C.C.A.N. (101 Stat.) 1329-40.

Asia,⁸² which states the intention to support children fathered by United States citizens abroad. All of these acts should be taken as evidence of the existence of an international norm as well as its endorsement by the United States government.

(3) *United Nation's Convention on the Rights of the Child as Evidence of the Norm*

The United Nation's Convention on the Rights of the Child provides further support for the emergence of a customary norm in international law governing the support of binational children. The Convention was adopted by the General Assembly of the United Nation on November 20, 1989, and became effective on September 2, 1990.⁸³ As of September, 1991, ninety-six countries had ratified the Convention.⁸⁴ Another forty-four are signatories, presumably considering ratification.⁸⁵ The Philippines has ratified the Convention.⁸⁶ The United States is a signatory and is discussing ratification.⁸⁷ This should not, however, bar American courts from using the Convention as evidence of customary international law.

The rights protected by the Convention can be grouped into three main areas: (1) those setting forth fundamental rights and freedoms, such as the right to life, equality, and a nationality; (2) those providing certain special protection from dangers to which children are particularly susceptible such as physical or mental abuse or maltreatment; and (3) those that seek to promote a child's proper development through access to basic necessities such as education, play, and cultural activities.⁸⁸ Several Convention provisions are relevant to the U.S. obligation to Filipino Amerasian children.⁸⁹ Article 7(1) pro-

82. See *supra* note 60.

83. JAAP E. DOEK, *The Current Status of the United Nation's Convention on the Rights of the Child*, in THE UNITED NATION'S CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PRÉPARATOIRES" 633 (Sharon Detrick ed., 1992) [hereinafter GUIDE].

84. *Id.*

85. *Id.*

86. *Id.*

87. *Filipinas Seek U.S. Support for Amerasian Children*, JAPAN ECON. NEWswire, Mar. 31, 1992, available in LEXIS, News Library, WIRES File. Ratification by the U.S. would bind the U.S. government to the terms of the Convention, just like any other multi-lateral treaty.

88. Jan Martenson, *Preface*, in GUIDE, *supra* note 83, at ix.

89. See *Id.* at 4-18 (reprinting full text of the Convention). These provisions in full text are:

Article 7. (1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. . . .

Article 8. (1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized

vides that a child has a "right to know and be cared for by his or her parents."⁹⁰ Article 8 provides that governments should provide assistance to children who have been deprived of a nationality as part of their identity.⁹¹ In addition, Article 9 discusses a government's duties when children are separated from one or both of their parents.⁹²

Articles 18, 20, and 27 are particularly relevant to the Filipino Amerasians' situation. Article 18(1) provides that governments "shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities" for their children.⁹³ Article 20(1) provides that child who is deprived of a family environment is entitled to special assistance from the state.⁹⁴ Finally, Article 27(4) provides that governments shall "take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad."⁹⁵

by law without unlawful interference. (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily reestablishing his or her identity.

Article 9. (1) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when . . . such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case . . . where the parents are living separately and a decision must be made as to the child's place of residence (3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. (4) Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child, or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family

Article 18. (1) States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. . . .

Article 20. (1) A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. . . .

Article 27 . . . (4) . . . [Governments shall] take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad

90. GUIDE, *supra* note 83, at 5.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

Strict adherence to these articles would place a great burden on the Filipino and U.S. governments, as they prescribe affirmative duties to take care of the children. Article 27, for example, might mandate that the United States government help locate absent servicemen fathers and facilitate paternity claims for the Filipino Amerasian children. While it may be difficult to achieve full compliance with the Convention, Article 27 and the other articles nevertheless recognize a legal obligation to the Filipino Amerasians on the part of the United States and provide evidence of a customary norm. A court should deem these articles evidence of customary international law in a suit on behalf of the Filipino Amerasian children.

As mentioned, custom reflects general practices of governments which are accepted as law.⁹⁶ Two federal cases citing the United Nation's Convention on the Rights of the Child provide further evidence of the U.S.'s acceptance of the Convention as law.⁹⁷ These cases specifically refer to President Ronald Reagan's "Mexico City Policy" of 1984,⁹⁸ which limited foreign aid funds for family planning and provided in part: "The United Nation's Declaration of the Rights of the Child [1959]⁹⁹ calls for legal protection for children before birth as well as after birth."¹⁰⁰ Although the Convention is not looked upon as binding authority in either case, its persuasive authority cannot be dismissed, and President Reagan's remarks underscore the Convention's influence in U.S. policy. Both the President's remarks and the federal court's citations can be taken as evidence of the emergence of a customary international law governing the rights of binational children, including Filipino Amerasians, as well as recognition of that norm by the U.S.

C. Possible Arguments Opposing a Summary Judgment Motion Against the Children

In deciding a case on behalf of the Filipino Amerasian children, a U.S. court hearing a claim based on international law might be concerned with jurisdictional issues, particularly comity, separation of powers, and judicial competency.¹⁰¹ Comity issues are not relevant in

96. Brownlie, *supra* note 69, at 6-7.

97. DKT Memorial Fund, Ltd. v. Agency for Int'l Dev., 887 F.2d 275, 277 (D.C. Cir. 1989); Planned Parenthood Fed'n of America v. Agency for Int'l Dev., 670 F. Supp. 538, 540 (S.D.N.Y. 1987), *aff'd*, 915 F.2d 59 (1990), *cert. denied*, 111 S.Ct 2257 (1991).

98. *Id.*

99. The cited provision remains in the Convention of 1989.

100. DKT Memorial, 887 F.2d at 277 (quoting Policy Statement of the United States of America at the United Nation's International Conference on Population 4-5 (2d Sess., Aug. 6-13, 1984)).

101. The Federal Tort Claims Act gives a statutory right to sue the U.S. government in tort, thereby waiving sovereign immunity. 28 U.S.C. § 2674 (1988).

this case, because as discussed in Part II, both the Filipino President and the Filipino House of Representatives have requested assistance from the United States on behalf of the children. Separation and judicial competency issues are relevant. However, Professor Harold Koh's "doctrinal targeting"¹⁰² approach to transnational public law litigation, should allow a court to not let these concerns bar the suit.

The doctrinal targeting approach is simple. Federal courts often dismiss public international law suits because of an overly broad application of jurisdictional rules when, in fact, they are competent to hear such claims. Professor Koh asserts that courts facing jurisdictional issues should address them on a case-by-case basis by selectively applying existing doctrines of federal jurisdiction, civil procedure, and foreign sovereignty law.¹⁰³ If a court makes effective use of these doctrines, a suit on behalf of the Filipino Amerasians should not be dismissed because of separation of powers and judicial competency concerns.

Beyond these jurisdictional issues, a suit on behalf of the Filipino Amerasian children may be subject to several additional arguments that support a summary judgment motion. Two of the more significant arguments are addressed here. First, the U.S. government may argue that the customary norm invoked on behalf of the Filipino Amerasian children is based on a moral rather than a legal obligation. Second, the U.S. may assert that either or both of the congressional acts discussed previously preempts the customary norm.¹⁰⁴ Although these concerns are legitimate, they should not defeat the application of customary international law to this case.

The government may claim that the evidence of a customary norm indicates only a moral obligation to the Filipino Amerasian children rather than a legal one. While it is true that the customary norm for care of binational children reflects a moral duty, countries have acted in accordance with that duty in some concrete manner. The norm is considered legally binding because of the consistent practice. The fact that a customary norm exists binds the U.S. regardless of whether or not the norm is also grounded in a moral duty.

Alternatively, the U.S. government may argue on a summary judgment motion that either the Amerasian Immigration Act¹⁰⁵ or section 2201 of the Foreign Assistance Act of 1961¹⁰⁶ controls the case

102. Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L.J. 2347, 2382 (1991).

103. *Id.*

104. Customary international law is controlling "where there is no treaty, and no controlling executive or legislative act or judicial decision. . . ." *The Paquete Habana*, 175 U.S. 677, 700 (1900).

105. 8 U.S.C. § 1154(f)(2) (1994).

106. 22 U.S.C. § 2201 (1988).

and thus bars any judicial relief.¹⁰⁷ The government could argue that the exclusion of Filipino Amerasians in the Amerasian Immigration Act bars the invocation of a customary norm because the exclusion indicates a congressional intent not to render them assistance. This argument, however, is without merit. The Amerasian Immigration Act's legislative history shows that the act was primarily designed to help only those who had suffered intense racial discrimination in their native countries.¹⁰⁸ Congress has not yet addressed the plight of the thousands of children of U.S. servicemen who have not suffered intense racial discrimination. Thus, the Amerasian Immigration Act does not control the situation of the Filipino Amerasians because it targeted only a specific sub-group of binational children to whom the U.S. is responsible.

The government may also argue that section 2201 of the Foreign Assistance Act preempts the assertion of a customary norm on behalf of the Filipino Amerasian children. The government may claim that the mandate of the customary norm has been satisfied because the children have been granted some part of the three-million dollars allocated in section 2201. This argument, however, is erroneous because the money fails to provide an adequate remedy to the Amerasian children. A court may use it as evidence of the custom, but because section 2201 so substantially underestimates the scope of the norm protecting binational children, it should not be held to preempt judicial action.

IV. Options of Relief

Having ascertained the existence of a customary norm, a judge must then grant relief. This relief might simply be the recognition of the rights of Filipino Amerasian children by a U.S. court. Relief might also include damages or some type of injunction. This Note is intended not to provide a procedural discussion of judicial remedies in a transnational lawsuit, but rather to identify the broader options of relief. Whether relief for the children comes in the form of a court order or through legislation is not so important as the substance of that relief. The following is intended to contribute that substantive discussion.

There are at least three options of relief for the plight of Filipino Amerasian children. House Bill 2429 suggested preferred status in immigration for relief.¹⁰⁹ *Acebedo* requested additional funding for

107. *The Paquete Habana*, 175 U.S. 677 (1900).

108. *Immigration Reform: Hearings Before the Subcommittee on Immigration, Refugees and International Law of the Committee on the Judiciary*, 97 Cong., 1st Sess. 897-99, pt. 2 (1981) (statement of Rep. Stewart B. McKinney).

109. H.R. 2429, 103d Cong., 1st Sess. (1993).

education and medical expenses. A third option is the creation of a U.S.-based program that helps identify absentee fathers. These options will be discussed in turn.

A. Preference in Immigration

Preferential immigration status seems to be the most popular choice among the remedies to help the Filipino Amerasians. Not only has this solution been proposed in the U.S. Congress in the form of House Bill 2429,¹¹⁰ but the Filipino House of Representatives has also passed its own resolution in support of this type of action.¹¹¹ This choice, while gratifying in the short term, does not provide the relief necessary to help the children in the long term.

Some members of the Filipino Foreign Affairs Committee argued against lobbying the U.S. government for passage of House Bill 2429 because it might appear that the Filipino government is trying to send away its citizens.¹¹² It does appear that the Filipino government was, in fact, trying to do just that; such an approach is inconsistent with current Filipino policy. The Filipino government is currently attempting to shift the Philippines' economy from an agricultural one to an industrialized one.¹¹³ A large pool of workers is among the country's few economic assets, so it does not make sense for the government to so readily give up its people.

Proponents of the legislation claim that the amendment will simply give the Filipino Amerasians a choice to emigrate to the United States.¹¹⁴ This choice, however, is one between two evils: poverty and stigma in the Philippines or poverty and stigma in the United States. Of course, conditions in the Philippines may be so much worse than in the United States that emigration is the only real option.

While proponents of the legislation would argue that the chances of overcoming inequities at birth are higher in the United States, im-

110. *Id.*

111. H.R. No. 797 (Phil., Oct. 5, 1993).

112. *Draft Committee Report on the Plight of the Filipino Amerasians*, MINUTES OF THE FILIPINO COMMITTEE ON FOREIGN AFFAIRS paras. 4 & 8 (Sept. 29, 1993).

113. Rita Raagas, *Subic Bay: Asia's Next Miracle City?*, UPI, Aug. 24, 1994, available in LEXIS, News Library, CURNWS File (discussing economic changes in the Philippines, focusing primarily on Subic Bay).

114. *Id.* at para. 9. Proponents, Filipino and American, also rely on an equity theory. They feel that the Amerasian Act should be amended to include Filipino Amerasians in order to equalize benefits granted by the United States to other Asian countries. See, e.g., Joseph M. Ahern, *Out of Sight, Out of Mind: United States Immigration Law and Policy as Applied to Filipino-Amerasians*, 1 PAC. RIM L. & POL'Y J. 105 (1992) (explaining that equity dictates extending preferential immigration status to Amerasian children from the Philippines and suggesting methods by which the INS could streamline such a process); Letter from Rep. Lucien Blackwell to Members of Congress (June 16, 1993) (introducing H.R. 2429 and H.R. 797 calling for the inclusion of Filipino Amerasians in existing policy).

migration to the United States is not a panacea for the obstacles faced by the Filipino Amerasians. Two psychiatry professors who have helped resettle Vietnamese Amerasian children have said:

Amerasians carry their own "dreams" about life in America. They arrive here with already intense emotional ties to this "land of their fathers," carrying inner images that are often highly idealized and unrealistic. All too many of the Amerasians we are working with are poorly equipped—socially, educationally and psychologically—to make the kind of adjustment and eventual adaptation to life in America that most of us would judge to be adequate. *Without additional support to help them achieve a reasonable degree of economic and emotional self-sufficiency, we fear that many may fall into a cycle of poverty, gang membership and welfare dependency.*¹¹⁵

Stories of the Vietnamese Amerasians who emigrated under the Amerasian Homecoming Act and the Amerasian Immigration Act support the case against passage of House Bill 2429. In addition to the usual barriers of language and culture familiarity, some of the Vietnamese Amerasians have also been rejected by the Vietnamese community in the United States.¹¹⁶ Many Vietnamese Amerasians are illiterate in Vietnamese and have had little formal schooling.¹¹⁷ Furthermore Vietnamese Amerasians have had the benefit of the 1988 Homecoming Act, which provided general assistance and English lessons for up to one year,¹¹⁸ benefits not included in proposed legislation for Filipino Amerasians.¹¹⁹ Filipino Amerasians would also not be allowed to enter the United States with their mothers or guardians, another benefit granted only to Vietnamese Amerasians.

In addition, conditions for the Filipino Amerasians in the Philippines may not be as desperate as for the Vietnamese Amerasians in Vietnam. Unlike in Vietnam, Western features are highly valued in the Philippines.¹²⁰ Light skin is associated with the ruling elite, which in the past four hundred years has been either Spanish or American.¹²¹ In contrast, Vietnamese culture prides itself on its racial ho-

115. J. Kirk Felsman & Mark C. Johnson, *For Amerasians, A Welcome Mat Is Not Enough*, L.A. TIMES, Jan. 23, 1989, at Part II, 5 (emphasis added).

116. Dianne Klein, *Lingering Casualties of Vietnam*, L.A. TIMES, June 30, 1991, at A1.

117. *Id.*

118. *Id.*

119. Pub. L. No. 100-202, 1987 U.S.C.C.A.N. (101 Stat.) 1329-40.

120. "Western" in this case means Caucasian. Many Amerasians are children of African-American U.S. servicemen. The racial composition of the Philippines includes the indigenous Malays, who are considered members of the black race. This may help ease the racial stigma for Filipino Afro-Amerasians. See David Gonzalez, *For Afro-Amerasians, Tangled Emotions*, N.Y. TIMES, Nov. 16, 1992, at B1 (discussing the difficult experiences of Afro-Amerasians in Vietnam and their sense of cultural disenfranchisement in the U.S.).

121. Mark Fineman, *Identity Doubts Linger; Amerasians at Home in Philippines*, L.A. TIMES, Mar. 31, 1988, at Part I, 2 (explaining that mixed-race children in the Philippines are "not only welcome, but venerated"). But see Levi, *supra* note 32, at 474-75 (arguing that

mogeneity.¹²² Vietnamese women who had relationships with American men are looked upon as traitors and whores.¹²³ "Mixed" Vietnamese children are an easy target for discrimination by their peers.¹²⁴

Finally, while many Filipino Amerasian children seek to meet their serviceman fathers, this is difficult because the children usually know very little about them. A first name or a photograph may be their only source of information.¹²⁵ Even if Amerasian children are able to identify and locate their fathers, the fathers may not want to meet them. Finally, if father and child are reunited, a father may not be able to support his child financially or emotionally.¹²⁶

B. Funding to Pay for the Children's Upbringing

The Filipino Amerasian children and their mothers might be best served with a monetary grant to provide food, clothing, housing, education, and medical attention and supplies.¹²⁷ The money would help pay for the children's upbringing while keeping them in a more familiar environment, closer to the home they know. Subic's base infrastructure is nearly intact and includes a power plant, office buildings, beach resorts, an 18-hole golf course, and warehouses.¹²⁸ Olongapo's former mayor is now head of the Subic Bay Metropolitan Commission and has been trying to convert the former base area into an international economic zone.¹²⁹ Part of the stock of the newly-created businesses might go to the children, as the base is the legacy left by the

there is still a stigma because of the circumstances of birth, that the mother was a "bar girl," and that a child's birth can be traced.)

122. Levi, *supra* note 32, at 470.

123. Klein, *supra* note 116, at A1.

124. Vietnamese Amerasians are called "bui doi" or "children of the dust" because of their coloring. Irene Sege, *U.S. No Haven to Amerasians, Survey Finds*, BOSTON GLOBE (Metro/Region), Feb. 14, 1990, at 1.

125. See Primetime Live, *supra* note 34; *One Chance To Become An American*, N.Y. TIMES, Jun. 22, 1994, at A10.

126. In an example of the worst case scenario, a junior welterweight champion from the Philippines, Morris East, met his father just before Thanksgiving in 1992. His father was disabled and living in low-income housing because he could not work. Jack Fiske, *A Champ's Thanksgiving Reunion*, S.F. CHRON., Nov. 26, 1992, at B10.

127. This relief may be part of new legislation or an increase in funding under existing legislation such as the Foreign Assistance Act.

128. See Raissa Espinosa-Robles, *From Swords To Common Shares*, FILIPINAS, June, 1993, at 14-16 (discussing the economic conversion plans for the Subic naval base). One estimate of the value of the Subic base infrastructure is \$8 billion. See, e.g., *Morning Edition* (National Public Radio Broadcast, Nov. 24, 1993); Espinosa-Robles, *supra*.

129. See Raagas, *supra* note 113.

American fathers.¹³⁰ The U.S. government could set up a joint trust for the children in conjunction with the Filipino government. In addition, part of the former bases could be used to house Amerasian children and their families. The old schoolrooms and health clinic could also be put to use for them.

C. Tracking Down Absentee Fathers

Another possible remedy would be for United States government to set up a program to aid in identifying the servicemen fathers of the Filipino Amerasians.¹³¹ In the event that paternity can be established, the U.S. government could file a subrogation claim against the father for money paid out under the Foreign Assistance Act of Sept. 4, 1961.¹³² Beyond the potential for subrogation claims, however, the U.S. government's aid in tracking down absentee fathers can enable an Amerasian child and her mother to sue the serviceman directly for child support and alimony under existing state child support laws, of which federal law can aid enforcement.¹³³

In sum, there are several options of legal relief available to the Filipino Amerasian children. Among these options, the grant of money for basic necessities and support is most attune with the best interests of the children. The money could be used for food, medical attention, and educational expenses, all of which help secure them a more secure adult life. Relief for the children may come in the form of more than one of the options discussed. For example, the children could be granted both money for necessities and support as well as preferential status in immigration. Finally, actual relief may not be as important as simple U.S. recognition of the children's plight.¹³⁴

Conclusion

A customary norm regarding a country's obligation to its binational children has developed in international law. In view of legislation Congress has passed, it is clear that the United States recognizes the obligation. The legislation, along with the practice of other nations in repatriating binational children to the countries of their fa-

130. U.S. companies such as Federal Express, Enron, and Coastal Petroleum have begun operations at Subic using the former base's facilities. Edward A. Gargan, *Subic Bay Rises As An Industrial Hotbed*, N.Y. TIMES, May 30, 1995, at D4.

131. In *War Babes v. Wilson*, 770 F. Supp. 1 (D.D.C. 1990), the court found no unwarranted invasion of privacy in disclosing the home addresses of servicemen to three British citizens believed to be their children.

132. See *supra* note 60.

133. See Elizabeth Kolby, Note, *Moral Responsibility to Filipino Amerasians: Potential Immigration and Child Support Alternatives*, 2 A.L.J., 61, 77-80 (1995).

134. For example, this recognition may exist in the form of legislation, presidential decree, or a court judgment.

thers and the United Nation's Convention on the Rights of the Child, provides evidence of the norm's emergence as customary international law. The United States, therefore, has an international mandate to provide relief to the Filipino Amerasians at Olongapo and Angeles. This relief may come as part of some presidential or congressional action but a U.S. federal court, using the doctrinal-targeting approach to transnational public law cases, should have no hesitation in stating the applicable law and ordering an appropriate remedy.

